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IN THE

Supreme Court of the United States

OCTOBER TERM, 1926

No. Original [redacted] 11

STATE OF NEW YORK,
Complainant,

vs.

STATE OF ILLINOIS AND SANITARY DISTRICT OF CHICAGO,
Defendants.

BILL OF COMPLAINT

ALBERT OTTINGER,
Attorney-General of the State of New York.
Solicitor for Complainant.

In the Supreme Court of the United States

OCTOBER TERM, 1926

NO. ORIGINAL

STATE OF NEW YORK,
Complainant,

vs.

STATE OF ILLINOIS AND SANITARY DISTRICT OF CHICAGO,
Defendants.

State of New York files this bill of complaint herewith in the above entitled suit in pursuance of an order of this Court made on the 11th day of October, 1926.

ALBERT OTTINGER,

Attorney-General of the State of New York,
Solicitor for Complainant.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1926

No. ORIGINAL

STATE OF NEW YORK,
Complainant,
vs.
STATE OF ILLINOIS AND SANITARY DISTRICT OF CHICAGO,
Defendants.

BILL OF COMPLAINT

The State of New York, one of the United States of America, by its solicitor, Albert Ottinger, Attorney-General of said State, brings this bill of complaint against the State of Illinois and the Sanitary District of Chicago and your orator complains and alleges:

I

The State of New York is one of the states of the United States of America and this action is brought on its behalf, in the Supreme Court of the United States in the exercise of the original jurisdiction of said court on the ground that it is an action in equity relating to a controversy between two or more states of the United States and also between a state of the United States and a citizen of another state.

II

The defendant, State of Illinois, is also one of the States of the United States of America and the defendant, Sanitary District of Chicago, is a public corporation organized and existing under and by virtue of the laws of said State of Illinois and is a citizen of said last named State.

III

The State of New York is one of the original thirteen states of the United States of America. The State of New York has approximately five hundred and fifty-eight miles of continuous shore line on Lakes Erie and Ontario, the Niagara river, and that part of the St. Lawrence river forming the international boundary line between said State and the Province of Ontario, Canada. The State of New York owns all of the beds of these lakes and rivers lying within its boundaries, subject only to the right of the public to navigate the same and subject to the right of the Congress to regulate commerce thereon under the commerce clause of the Constitution, and as a down stream riparian owner is entitled to the full and natural flow of the water therein.

The order of precedence in the use of the waters of this waterway is (1) domestic and sanitary purposes in the ordinary, reasonable and generally approved manner in the use of water for such purposes, after which use water so used must be returned to the stream or body of water from which it is taken; (2)navigation; (3) development of power and other legitimate uses. The use of the waters of this waterway for navigation purposes is general—each State possessing equal rights. The residue of the water available for power belongs to the State and the citizens of the State adjoining that particular part of the waterway where power may be developed. A flow of ten thousand cubic feet per second of water through the Niagara river and the international section of the St. Lawrence river is capable of developing approximately four hundred thousand horse power. The right to use this water for the development of power is a property right of the State of New York and its citizens, which property right neither the defendants nor the Congress of the United States has a right to destroy or impair by abstracting or diverting

water from Lake Michigan or any other part of the Great Lakes and St. Lawrence waterway into the Mississippi waterway.

IV

The Great Lakes waterway lies partly within the United States of America and partly within the Dominion of Canada, one of the states or dominions of the colonial empire of Great Britain and the continuation of that highway connecting the Great Lakes with the Atlantic Ocean through and by the St. Lawrence river, passes for a great distance wholly through Canadian territory; that all of said waterway lying within international waters has been opened by treaties between the United States of America and Great Britain and the Dominion of Canada, as free water so that American vessels including the ships of citizens of complainant and the trade and commerce of its people are secured equal rights of navigation with Canadian vessels in the many harbors, approximately fifty in number, which the Canadian government has improved for shipping on the Great Lakes, their connecting waters and the St. Lawrence river, all of which rights and benefits of navigation are of great and continuing benefit to complainant, its people, its trade and commerce and the prosperity of its shipping interests.

V

That the Great Lakes waterway lies within a single water shed and constitute a natural highway which may be improved but may not be destroyed or impaired by either Federal or State authority.

VI

That the State of *New York has a vested right* in and to the Great Lakes waterway as a *highway of commerce concurrent with the rights of all other states of the United States bordering* upon said waterway and of the Dominion

of Canada also bordering thereon and that said natural waterway is lawfully entitled to receive all of the water from rivers and streams in the same water shed provided by nature for the purpose of keeping up and maintaining the waters in said water shed as such natural highway.

VII

In the year 1889 the legislature of the State of Illinois enacted a statute entitled "An act to create sanitary districts and remove obstructions in the Des Plaines and Illinois Rivers," approved May 29th, 1889, and published in the laws of Illinois for the year 1889 commencing at page 186; which act authorized the organization of public corporations to be known as sanitary districts, with power, among other things, to construct, maintain and operate drainage canals or channels for the disposal of drainage and sewage. By sections 23 and 24 of the said act, it was further provided as follows, to-wit:

"Sec. 23. If any channel is constructed under the provisions hereof by means of which any of the waters of Lake Michigan shall be caused to pass into the Des Plaines or Illinois rivers, such channel shall be constructed of sufficient size and capacity to produce and maintain at all times a continuous flow of not less than 300,000 cubic feet of water per minute and to be of a depth of not less than fourteen feet and a current not exceeding three miles per hour, and if any portion of any such channel shall be cut through a territory with a rocky stratum where such rocky stratum is above a grade sufficient to produce a depth of water from Lake Michigan of not less than eighteen feet, such portion of said channel shall have double the flowing capacity above provided for, and a width of not less than one hundred and sixty feet at the bottom,

capable of producing a depth of not less than eighteen feet of water. If the population of the district drained into such channel shall be made and kept of such size and in such condition that it will produce and maintain at all times a continuous flow of not less than 20,000 cubic feet of water per minute for each 100,000 of the population of such district, at a current of not more than three miles per hour, and if at any time the general government shall improve the Des Plaines or Illinois rivers, so that the same shall be capable of receiving a flow of 600,000 cubic feet of water per minute, or more, from said channel, and shall provide for the payment of all damages which any extra flow above 300,000 cubic feet of water per minute from such channel may cause to private property so as to save harmless the said district from all liability therefrom, then such sanitary district shall within one year thereafter, enlarge the entire channel leading into said Des Plaines and Illinois rivers from said district to a sufficient size and capacity to produce and maintain a continuous flow throughout the same of not less than 600,000 cubic feet of water per minute with a current of not more than three miles per hour, and such channel shall be constructed upon such grade as to be capable of producing a depth of water not less than eighteen feet throughout said channel, and shall have a width of not less than one hundred and sixty feet at the bottom. In case a channel is constructed in the Des Plaines river as contemplated in this section it shall be carried down the slope between Lockport and Joliet to the pool commonly known as the upper basin, of sufficient width and depth to carry off the water the channel shall bring down from above. The district constructing a channel to carry water from Lake Michigan of any amount authorized by this act may correct, modify and remove obstructions in the Des

Plaines and Illinois rivers wherever it shall be necessary so to do to prevent overflow or damage along said river, and shall remove the dams at Henry and Copperas Creek in the Illinois river, before any water shall be turned into the said channel. * * *

"Sec. 24. When such channel shall be completed, and the water turned therein, to the amount of three hundred thousand cubic feet of water per minute, the same is hereby declared a navigable stream, and whenever the general government shall improve the Des Plaines and Illinois rivers, for navigation, to connect with this channel, said general government shall have full control over the same for navigation purposes, but not to interfere with its control for sanitary or drainage purposes."

VIII

In November and December of the year 1889, defendant, the Sanitary District of Chicago, was organized as a sanitary district under the act of 1889 hereinbefore referred to, and has since continuously existed as such sanitary district under the said act of 1889 and the acts amendatory thereof and supplementary thereto. At the time of its organization said defendant district consisted of a territory about 185 square miles in area. By successive acts of the legislature of Illinois the area of said defendant district has been increased from time to time, and as your orators are informed and verily believe and therefore aver, its area is now approximately 395 square miles, extending from the Illinois-Indiana State line on the south and east to the northerly boundary of Cook county on the north, with about 33 miles of frontage on Lake Michigan, and comprises the entire city of Chicago together with large areas of land to the south, west and north of said city.

IX

On or about the 3rd day of September, 1892, defendant Sanitary District of Chicago, acting as a subordinate agency of the defendant, State of Illinois, pursuant to the act of 1889 hereinbefore referred to, commenced the construction of a canal or channel commencing at a point in the west fork of the south branch of the Chicago river about 6 miles above the mouth of said river, which river was a navigable stream tributary to and a part of the Great Lakes watershed, and extending in a general westerly direction for a distance of about 32 miles to a point near the city of Joliet, Illinois. At its westerly terminus said canal was made to connect with the Des Plaines river, a stream flowing in a westerly and southwesterly direction and forming a tributary of the Illinois river, which latter river in turn flows in a westerly and southwesterly direction and forms a tributary of the Mississippi river.

X

In the construction of said canal it was at all times the plan of the defendant, State of Illinois, and the defendant, Sanitary District of Chicago, that the said canal should be used as a passage-way for the sewage of the territory comprising the Sanitary District of Chicago, to the end that such sewage might be carried down the said canal into the Des Plaines and Illinois rivers; and in order to accomplish the said purpose it was the intention of said defendants at and prior to the commencement of the construction of said canal to divert from Lake Michigan, and pass through the said canal, such amounts of water as might be deemed by said defendants to be necessary for the proper dilution of the said sewage and its propulsion through the canal and the Des Plaines and Illinois rivers. In pursuance of such intention, and prior to the completion of said canal, the legislature of the defendant State of Illinois enacted

in the year 1895 an amendment to section 20 of the act of 1889 hereinbefore referred to, which amendment is published in the Laws of Illinois for the year 1895 commencing at page 168 thereof, and provides that any sanitary district organized under the provisions of the act of 1889 and maintaining a channel which causes the discharge of sewage into or through any river beyond the limits of such district, "shall, at the time any sewage is turned into or through any such channel or channels, turn into such channel or channels not less than 20,000 cubic feet of water per minute for every 100,000 inhabitants of said district, and shall thereafter maintain the flow of such quantity of water."

XI

Upon the completion of the said canal, the defendant, Sanitary District of Chicago, in compliance with section 27 of the said act of 1889, applied to the Governor of the State of Illinois for authority to commence the use of said canal, and such authority was granted by the said governor on behalf of the defendant State of Illinois, and thereupon, on or about the second day of January, 1900, said defendant District commenced the abstraction of water from Lake Michigan and its diversion into the Chicago river and thence into and through the said canal, in such amounts and at such velocity as to reverse the flow of the Chicago river and create a steady and uninterrupted flow of water, from said day down to the present time, from Lake Michigan through the Chicago river to the said canal thence through the said canal to the Des Plaines river near Joliet, and thence down the Des Plaines and Illinois rivers to the Mississippi river.

XII

The primary object and purpose of the act of 1889 hereinbefore referred to, as said act was construed by the highest court of the State of Illinois in the case of *People v.*

Nelson, 133 Ill. 565, 27 N. E. 217, and *Beidler v. Sanitary District of Chicago*, 211 Ill. 628, 71 N. E. 1118, was to provide a method of disposing of the sewage of the city of Chicago and contiguous territory, and the canal constructed by the defendant district as hereinbefore described has been continuously used for such purpose since the month of January, 1900. By the terms of the act of 1895 referred to in paragraph 10 hereof, defendant State of Illinois has undertaken to make it the legal duty of the defendant, Sanitary District of Chicago, to pass water through the said canal at the rate of 20,000 cubic feet per minute or 333 1-3 cubic feet per second, for every 100,000 inhabitants of the territory composing the Sanitary District of Chicago. At the time of the passage of said act of 1895, and at all times since, it was well known to the legislature of the State of Illinois and to the officers of the defendant Sanitary District of Chicago, that the only source from which water in such quantities as required by said act could be obtained was by the abstraction of water from Lake Michigan, and it was at all of said times the intention of said legislature that the duty which it sought to impose upon the defendant District by the said act of 1895 should be performed by means of such abstraction, according to the census of 1920, the population of the Chicago Sanitary District was 2,963,090 in that year, and as your orators are informed and verily believe and therefore aver, the population of said district is now in excess of said number, and therefore the effect of the said act of 1895 is to direct the defendant, Sanitary District of Chicago, to abstract water from Lake Michigan at the present time at the rate of not less than 9,876 cubic feet per second.

XIII

Subsequent to the opening of the said canal, and in the year 1903, the defendant, State of Illinois, by an act of its legislature approved May 14th, 1903, and published in the Laws of Illinois for the year 1903 commencing on page 113,

undertook to authorize the defendant, Sanitary District of Chicago, to construct and operate a plant for the generation of electrical energy by hydraulic power derived from the water passing from Lake Michigan through the said canal. The provisions of said act with reference to said subject are as follows:

> "Sec. 5. That the said sanitary district of Chicago is hereby authorized to construct all such dams, waterwheels and other works north of the upper basin of the Illinois and Michigan Canal as may be necessary or appropriate to develop and render available the power arising from the water passing through its main channel and any auxiliary channels now, or hereafter, constructed by said district.
>
> "Sec. 6. That the power made available by the works constructed under the provisions of this act shall be converted into electrical energy, and shall be transmitted to the various cities, villages and towns within said sanitary district, or adjacent to the main channel of said sanitary district and may be used in the lighting of said cities, villages and towns, or parts thereof, or for the operation of pumping plants or machinery used for municipal purposes or for public service, or may be disposed of to any other person or corporation, upon such terms and conditions as may be agreed to by the said sanitary district: Provided, however, that it shall be the duty of said sanitary district to utilize so much of said power as may be required for that purpose to operate the pumping stations, bridges and other machinery of said sanitary district."

XIV

Under and by virtue of the authority attempted to be conferred on the defendant District by the defendant State of Illinois in said act of 1903, said District constructed and

placed in operation a hydro-electric power plant at Lockport near the western terminus of the said canal, and has continuously operated the same since its completion in the month of November, 1907. The said power plant is capable of developing in excess of 36,000 horsepower of electrical energy and does in fact develop and generate, as your orators are informed and verily believe and therefore aver, in excess of 20,000 horsepower continuously throughout the year. The electrical energy thus generated is mainly transmitted to the city of Chicago and there sold for municipal and commercial purposes; and, as your orators are informed and verily believe and therefore aver, the operations of said plant since the year 1907 have produced many millions of dollars of gross revenue to the defendant Sanitary District of Chicago and have earned for the said District many millions of dollars of profits over and above the cost of operating the said plant, including proper allowances for depreciation and a reasonable return upon investment therein.

XV

Since the completion of said hydro-electric development near the western terminus of said canal, the object and purpose of the defendants in the operation of the said canal and in the abstraction of water from Lake Michigan through the same has been and is now two-fold, to-wit: the disposition of the sewage of the defendant Sanitary District of Chicago, and the generation and sale of electrical energy.

XVI

According to the reports of the engineers of the defendant, Sanitary District of Chicago, the yearly mean amount of water passing through the said canal at its westerly terminus, practically all of which is water abstracted from Lake Michigan, is as follows for the years 1900 to 1917, inclusive:

Year	Cubic Feet per second	Year	Cubic Feet per second
1900	2,900	1909	2,766
1901	4,046	1910	3,458
1902	4,302	1911	6,445
1903	4,971	1912	6,424
1904	4,793	1913	7,191
1905	4,480	1914	7,105
1906	4,473	1915	6,971
1907	5,116	1916	7,325
1908	4,421	1917	7,786

—which figures, as your orator is informed and believes and therefore avers, are based on methods of calculation which result in very considerably under estimating the actual amounts of flow through the canal. Your orator is informed and verily believe and therefore avers that the actual mean abstraction of water from Lake Michigan through said canal for the year 1917 was about 8,800 cubic feet per second, and that such abstraction beginning with the year 1918 and taken down to the present time has been in excess of 8,800 cubic feet per second; which abstraction is on the basis of average amount of water taken and which is greatly increased at certain periods in the exercise of the judgment and appropriating desires of the defendant, Sanitary District, and which increases have no relation to the needs of navigation on the Great Lakes and which at times of low water or barometric pressure are still further adversely affected by the further lowering of lake levels and the consequent decrease in the navigable capacity of said Great Lakes, their rivers and harbors.

XVII

Complainant is informed and believes and therefore avers it to be true that the rivers and streams of the State of Illinois contribute naturally to the Great Lakes water-

shed less than an average of one thousand cubic feet per second of water; that the defendants are now withdrawing permanently from said Great Lakes watershed an average of eleven thousand seven hundred cubic feet per second, including the natural flow of the Chicago river wholly reversed and appropriated by the defendant Sanitary District and diverted into another watershed, and the pumpage of said defendant Sanitary District from the Great Lakes which is not returned in its natural course to said Great Lakes but is diverted into another watershed by means of said defendant Sanitary District's canal; and complainant is informed and believes and therefore avers it to be true that the said defendant Sanitary District from time to time increases its abstraction, appropriation and diversion of water from the Great Lakes to a total of fourteen thousand two hundred cubic feet per second with resultant and resulting increased impairment of the levels of the Great Lakes, particularly during periods of low water or barometric pressure thereon, thereby increasing the hazards of navigation and causing an increased reduction in the navigable capacity of said Great Lakes, their connecting waterways and ports and harbors.

XVIII

That the Chicago river is a navigable stream within the Great Lakes watershed which contributes in its natural state, your orator is informed and believes and therefore avers as true, approximately one thousand cubic feet per second to the waters of the Great Lakes, in the use of which complainant and its people, its trade and commerce, ships and shipping, has a vested right for purposes of navigation and a paramount easement for highway purposes; that complainant both in its proprietary capacity and quasi-sovereign capacity as lower riparian proprietor has riparian rights in said natural flow of said Chicago river,

but notwithstanding the rights and interests of complainant and of its people and the rights of navigation and of all people adjacent and having a right of highway in the Great Lakes waterway, including the Dominion of Canada, the defendant, Sanitary District, has wholly diverted the flow of said river from said watershed and appropriated it to its own use in the operation of a sewage disposal canal and the production of hydro-electric power to the entire destruction of all riparian rights of said complainant and of its people and the navigation rights of all interests navigating the Great Lakes.

XIX

All of the water abstracted from Lake Michigan by the defendants in the manner hereinbefore set forth is carried into the Mississippi valley, and hence is permanently abstracted from the Great Lakes system and its own natural watershed. As the result of such abstraction, the mean level of the water in Lakes Michigan, Huron, Erie and Ontario and in the various waterways connecting said lakes, and in the St. Lawrence river above tide-water, has been lowered not less than six inches below the level that would exist in said lakes and waterways in the absence of such abstraction; and as the amount of abstraction in cubic feet per second becomes greater, the amount of lowering of the level of said lakes and waterways increases in proportion.

XX

That because of unexplained conditions resulting possibly in part from deforestation of the great timbered areas formerly adjacent to the Great Lakes basin, there is an unexplained reduction in the amount of water in the Great Lakes basin with a resultant decrease in the levels of the Great Lakes amounting as your orator is informed and believes and therefore avers to be true, to the

extent of approximately three feet less than the levels existing ten years ago and consequent corresponding decrease in the navigable capacity of said Great Lakes, their connecting waters, ports and harbors; that the Great Lakes and their connecting waters and harbors and also in large areas of the lake bottom are so shallow that their levels are already dangerously lowered to the impairment of their navigation under the conditions and development of modern commerce; that although connecting waterways and channels are susceptible of deepening by dredging, it is a practical impossibility to change large shoal areas of the ocean bottom of these inland oceans constituting the Great Lakes water system, so that in times of violent storm, the shoal places may be a sufficient distance from the normal surface of the lake to permit of navigation in safety and if lake levels are permitted to be impaired by the abstraction of large volumes of water, whether under pretended authority of the legislature of a State or of the Congress of the United States, to the point where the large ships of modern commerce, because of the increasing hazards of open water navigation in time of storm, may only navigate under fair weather and placid water conditions, it will necessarily result in a destruction and retirement of the present commercial carriers of the said Great Lakes with incidentally great loss of property, great increase in freight costs due to the necessity of carriage of smaller cargoes in a new type of cargo carrier, with a consequent impairment of the prosperity of the states, people, cities and industries adjacent to the Great Lakes waterway and the states to the west thereof now dependent thereon and to the prosperity of the State of New York and of its people and industries in which complainant is particularly interested and with respect whereof it particularly complains.

XXI

Neither the Congress of the United States nor any Federal agency or authority nor the legislature of the State of Illinois or any agency of that or any other State has the authority to abstract from the Great Lakes basin any water to be diverted into any other natural or artificial watershed, whether for the purpose of operating, maintaining and flushing an open sewer maintained in violation of modern standards of sanitation, or even for the purpose of navigation; the power of the Congress of the United States is expressly restricted to the control of the water of the Great Lakes as a navigable waterway under the powers vested in it by the commerce clause of the Constitution of the United States which power is that of regulation, not of destruction.

XXII

There is no authority in the government of the United States or of any of the states or of any of their agencies authorizing the changing of the natural course of the Chicago river and its unlawful alteration, reversal and change by the defendants is against the rights of this complainant as well as against the rights of all parties and interests in the Great Lakes water system.

XXIII

The lowering of the levels of the Great Lakes which are interrelated and interdependent, has seriously diminished the navigability and navigable capacity of said Great Lakes, their ports and harbors, with resultant impairment and partial destruction of the great natural highway in which the State of New York and its people have an interest as hereinbefore enumerated. On said lakes there is a great commerce, domestic and foreign, and many freight and passenger ships operate on all of said lakes and water-

way between the State of New York and the other states adjacent thereto and to and with other states and countries and in addition thereto, great ships particularly of a type peculiar to the Great Lakes and known as bulk freighters and having an enormous carrying capacity and capable of operation at very low freight rates when loaded to maximum capacity, carry from the great wheat producing areas of the American Northwest, the grain there produced to lower lake ports and to the ocean and also carry from the large mineral territories of northern Michigan and Minnesota and Canada, large mineral deposits particularly of iron and copper ore to the industrial districts of the United States and particularly of Illinois, Ohio, Indiana, Pennsylvania and New York and the industrial districts of the Province of Ontario in the Dominion of Canada and to the industrial districts of the State of New York in which complainant is particularly and peculiarly interested—while upbound these ships carry in addition to the vast variety of manufactured commodities known to commerce, the coal produced in the coal regions of the eastern part of the United States and necessary to the manufacturing, industrial, domestic and governmental uses of millions of the people of the United States on and adjacent to the borders of the upper lakes of said Great Lakes region, including not only the states of the northwest and of Canada but also Minnesota, Wisconsin, Illinois, Ohio, Indiana and particularly the State of New York in which state and the needs of its people, its industries, its commerce and its own governmental institutions, your orator is peculiarly interested. That for every inch of the normal draft of said vessels which they are unable to use because of the reduction in the navigable capacity of the Great Lakes waterway, their cargo carrying capacity is reduced by many tons with the resulting increase in freight costs per ton which becomes a burden upon the complainant state in its proprietary capacity and upon the many thousands of people

of these States, a burden upon intra and interstate commerce and an impairment of the use and the usefulness of the great natural highway created by nature for the use of the people adjacent thereto and expressly dedicated to said people by the Congress of the United States prior to the organization of the republic.

XXIV

That the complainant State in its proprietary capacity and also in its quasi-sovereign capacity is injured by the impairment of its riparian rights in that portion of Lakes Superior, Michigan, Huron, St. Clair, Erie, Ontario and the St. Lawrence river and their connecting waters lying within its boundaries resulting from the impairment and lowering of the levels of the Great Lakes consequent upon the unlawful and unnatural diversion and abstraction of water from the Great Lakes and their water shed by the defendants.

XXV

That the complainant State in its quasi-sovereign capacity has constantly sustained great and irreparable injury through the loss to its people, its trade, commerce and shipping and to owners of riparian rights in the Great Lakes and St. Lawrence river and their connecting waterways, due to the lowering of the levels of the Great Lakes consequent upon the unlawful and unnatural diversion and abstraction of water from the Great Lakes water shed by the defendants; and complainant avers that a great number of its citizens own within its borders, riparian rights in the Great Lakes and the St. Lawrence river and their connecting waterways, of a value of many millions of dollars which rights are largely dependent for their usefulness and value upon the maintenance of the levels of the Great Lakes; that the impairment and lowering of the lake levels of said Great Lakes is destructive of such valuable riparian

rights of citizens of New York located within its borders, with incidental destruction of the usefulness and value of docks, wharves, ship yards, boat houses, warehouses and landing places; and complainant avers that all of such rights existing and exercised under the law, may not be destroyed in the interests of the sewage disposal or hydro-electric power needs or desires or pretended economies of the defendant, Sanitary District, or of any other person.

XXVI

That large numbers of the citizens of the State of New York own interests in ships and ship yards within its borders which together with the privately dredged and maintained channels leading to ship yards and landing places have a value in the aggregate of many millions of dollars and which are dependent upon the continued and successful operation of commerce, intrastate and interstate upon the Great Lakes and St. Lawrence river and their connecting waters, all of which great and extensive interests, essential both to the prosperity of great numbers of its people and of great importance to complainant itself in the proprietary sense in the payment of taxes and other revenues, are being injured by the unlawful and unnatural diversion and abstraction from the Great Lakes and their watershed by the defendants with the resultant lowering of the levels of the Great Lakes and consequent decrease in their navigable capacity and the navigable capacity of the ports and harbors thereof improved at great expense by the government of the United States and by the municipal and port authorities of the respective ports and harbors, and also of the ports and harbors thereof improved at great expense by the Dominion of Canada, and causing great and irreparable loss to complainant and its people and its trade and commerce having equal rights of use with the people of the Dominion of Canada under international treaty.

XXVII

The acts of the defendants hereinbefore set forth and described, in abstracting water from the Great Lakes basin, and the rivers, streams and waters naturally contributary thereto and diverting them into the canal of the defendant District and into an entirely different watershed are in violation of the legal rights of complainant and of the people of the State of New York in the following respects, to-wit:

(a) In that the defendants by said acts are interfering with the common law and vested right and paramount easement of highway of the State of New York and of its people and of the public generally, to have the free and unobstructed use of the Great Lakes waterway and the various ports and harbors thereof both within and without the borders of the State of New York for purposes of navigation, trade and commerce, free from any and all interferences with the present and prospective natural navigable capacity of said waterway and its usefulness as a public highway.

(b) That the acts of said defendants constitute an interference with the right of the people of the State of New York as well as of the people generally, to the free and unobstructed navigation of Lakes Superior, Michigan, Huron, St. Clair, Erie and Ontario and the navigable waters between the said lakes and from said lakes into the Atlantic Ocean, which rights belong to the said people of the State of New York both by common law and by the express guaranty contained in the ordinance for the government of the territory of the United States northwest of the river Ohio, enacted by Congress on June 13, 1787, and constituting a contract between the government of the United States and the several States bordering on the Great Lakes and among said states bordering on the Great Lakes, which neither the government of the United States nor any of said states has the right to impair.

(c) That the acts of the defendants hereinbefore complained of constitute a present and constantly increasing burden upon intra-state and interstate commerce in that they are impairing and destroying a natural highway used and useful in interstate commerce.

(d) That the acts of the defendants hereinbefore complained of in abstracting water from the Great Lakes and Great Lakes watershed and thereby impairing their capacity, are destructive of the fisheries thereon and the riparian rights and shipping and commercial rights of complainant's citizens on and in said Great Lakes and their connecting waters; that complainant owns the fish in the Great Lakes adjacent to and within its borders which are available for and used by its people in connection with the fishing industry which is of very large and extensive scope within complainant's borders and also as a portion of the food supply of the people of the State of New York and that complainant and its people as well as the people generally, adjacent to and having an interest in said Great Lakes waterway, have a right to have such natural waters in the Great Lakes watershed maintained therein for the use and maintenance of the pleasure and convenience of the people of said state and for the purposes hereinbefore recited.

XXVIII

The said violations of the legal rights of the State of New York and of its people have caused and now cause and will continue to cause, so long as they are permitted to continue, serious interference with the trade and commerce of the people of the State of New York in their commerce within and among themselves, with neighboring states and with the world, and in its proprietary capacity, resulting in large and constantly increasing pecuniary losses to the said people and the said State which cannot be actually estimated and for the recovery of which no adequate remedy

exists at law. The State of New York therefore brings this action on behalf of itself and in its proprietary capacity and on behalf of the people of said State for the purpose of establishing and protecting the legal rights of said State and its people against the encroachment of the defendants and for the purpose of terminating a condition which is destructive to the welfare and prosperity of said State and of its people.

Wherefore, your orator prays that the defendants may be required to answer the allegations hereinbefore set forth in this bill of complaint and that upon final hearing of this cause an injunction be issued under the seal of this court, restraining the defendants and each of them and each of their officers, agents or servants from taking or causing to be taken, any water whatever from Lake Michigan and its natural tributaries in such manner as to permanently divert the same from the said lake and said watershed.

Your orator prays that upon the final hearing of this cause, an injunction be issued under the seal of this court restraining the defendants and each of them and each of their officers, agents and servants from reversing the flow of the Chicago river or in any manner obstructing its natural flow so as to prevent it from flowing in the course of nature into the Great Lakes, or to take or cause to be taken any water whatever from said Chicago river in such manner as to permanently divert the same from the Great Lakes watershed.

And your orator also prays for such other and further relief as to this Honorable Court may seem meet and consistent with equity and good conscience.

May it please your Honors to grant unto your orator a writ of subpoena under the seal of this court directed to the Governor and Attorney General of the defendant, the State of Illinois, and to the Sanitary District of Chicago,

commanding them and each of them on a day certain to be therein named and under a certain penalty, to be and appear in this honorable Court then and there to answer, but not under oath (answer under oath being expressly waived) all and singular the matters and things hereinbefore set forth and to abide such further order and decree of the court as may be made against the said defendants or either of them.

ALBERT OTTINGER,

Attorney-General of the State of New York,
Solicitor for Complainant.

UNITED STATES OF AMERICA,
STATE OF NEW YORK,
County of Albany. } ss.:

Albert Ottinger, being first duly sworn, on oath says that he is the duly elected, qualified and acting Attorney-General of the State of New York; that he has read the foregoing bill of complaint and knows the contents thereof; and that the same is true to his own knowledge except as to the matters therein stated on information and belief, and as to such matter he believes it to be true; and that as such Attorney-General he is duly authorized to pray leave to file said bill of complaint.

ALBERT OTTINGER.

Subscribed and sworn to before me
this 15th day of October, 1926.

Randall J. LeBoeuf, Jr.

Notary Public,
Albany County,
State of New York.

[Notarial Seal]